

6842
RECORDATION NO. _____ Filed & Recorded

DEC 26 1972 -9 50 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of November 20, 1972

Between

BESSEMER AND LAKE ERIE RAILROAD

and

RANDOLPH COMPUTER CORPORATION

(Covering 400 70-Ton Gondola Cars)

LEASE OF RAILROAD EQUIPMENT dated as of November 20, 1972, between Bessemer and Lake Erie Railroad Company, a Pennsylvania corporation (hereinafter called the "Lessee"), and Randolph Computer Corporation, a Delaware corporation (hereinafter called the "Lessor").

WHEREAS, the Lessor and the Lessee have entered into an Equipment Purchase Agreement dated as of November 20, 1972, wherein the Lessee has agreed to manufacture, sell and deliver to the Lessor the Railroad Equipment described in Schedule A hereto;

WHEREAS, the Lessee desires to lease all the units of said Equipment on or prior to January 31, 1973 (hereinafter called the "Cut-Off Date"), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

1. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

2. Delivery and Acceptance of Units. The Lessor will cause each Unit to be delivered to the Lessee at the point or points at which and immediately following the time at which such Unit is delivered to and accepted by the Lessor under the Equipment Purchase Agreement. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the "Certificate of Delivery"), stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with §5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

3. Rentals. The Lessee agrees to pay to the Lessor as rentals for each Unit subject to this Lease, the following: (i) an interim rental from the date of acceptance of each Unit under the Lease to and including January 31, 1973, payable on the date of acceptance of such Unit, of \$2.40 per day per Unit if Lessee elects Settlement Option A under the Equipment Purchase Agreement or \$2.83 per day per Unit if Lessee elects Settlement Option B under the Equipment Purchase Agreement; and (ii) a rental of \$216.40 per quarter per Unit for each Unit accepted under the Lease payable on February 1, May 1, August 1 and November 1 of each year commencing on February 1, 1973 to and including November 1, 1982.

All payments due from Lessee to Lessor pursuant to this Lease,

including but not limited to the rentals referred to in the immediately preceding paragraph, shall be made in United States funds at Lessor's address as set forth in Section 19 below or such other address within the United States of America as Lessor may direct.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent or any other payments due from Lessee to Lessor pursuant to this Lease, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the

obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms thereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

4. Term of Lease; Title. The term of this Lease as to each Unit shall begin on the date of delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§7, 10 and 13 hereof, shall terminate on January 31, 1983.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, are subject to the rights of the parties hereto under the Equipment Purchase Agreement.

Except as provided in any bill of sale or other document hereafter executed by Lessor, title to all of the Units shall at all times remain in Lessor. Nothing contained herein shall be construed to convey to, or create in, Lessee any right, title or interest in or to any Units, except as a Lessee.

5. Identification Marks. The Lessee will cause each Unit to be kept numbered in accordance with the identifying serial numbers specified in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the designation "Randolph Computer Corporation, Owner-Lessor", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to and property in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such names and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corpora-

tion to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates (the term "affiliate" as used in this Lease meaning any corporation controlling, or under common control with, Lessee) on Railroad Equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease. Upon the termination of this Lease, Lessee agrees, on Lessor's request, to remove any such names, initials and/or insignia from any Equipment on which same may have been placed.

6. Taxes. Lessee agrees to pay, and to indemnify and hold Lessor harmless from all licenses and registration fees and all taxes, including without limitation, income, gross receipt, franchise, sales, use, personal property, stamp and interest equalization taxes, levies, imposts, duties, charges or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon imposed against Lessor or its assigns by any Federal, state or local government or taxing authority or any subdivision thereof (i) upon or with respect to the Leased Equipment or (ii) upon the purchase, ownership, delivery, leasing, possession, use or operation thereof or (iii) upon the rentals, receipts, or earnings arising therefrom, or (iv) upon the income or other proceeds received with respect thereto, or (v) upon or with respect to this Agreement unless, and to the extent only

that and only so long as, any such fee, tax or other charge is being contested by Lessee in good faith and by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of the Leased Equipment or any part thereof; provided that this paragraph (a) shall not apply to (1) fees, taxes and other charges on, based on, or measured by, the net income of Lessor or its assigns; or (2) fees, taxes and other charges on, based on, or measured by the fees or compensation other than rentals, if any, received by Lessor or its assigns for services rendered in connection with the transactions contemplated hereby.

7. Payment for Casualty Occurrence. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall promptly and fully notify the Lessor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the sum of (i) the rental due under ¶3 hereof with respect to such Unit, if any, for the period up to the date of such payment and (ii) an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue

as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment Number</u>	<u>Percentage A</u>	<u>Percentage B</u>	<u>Payment Number</u>	<u>Percentage A</u>	<u>Percentage B</u>
1	104.624	111.774	21	63.768	65.999
2	104.177	111.469	22	61.832	63.996
3	103.659	110.915	23	59.851	61.945
4	103.068	110.283	24	57.824	59.848
5	101.039	107.404	25	55.752	57.313
6	99.925	106.220	26	53.637	55.139
7	98.746	104.966	27	51.478	52.919
8	97.499	103.641	28	49.276	50.656
9	95.260	100.595	29	42.363	43.253
10	93.901	99.159	30	40.072	40.913
11	92.483	97.662	31	37.735	38.527
12	91.006	96.102	32	35.352	36.094
13	83.839	87.947	33	32.922	33.382
14	82.266	86.297	34	30.446	30.872
15	80.639	84.590	35	27.922	28.313
16	78.959	82.828	36	25.349	25.704
17	76.468	79.679	37	22.727	22.886
18	74.703	77.840	38	20.056	20.197
19	72.891	75.952	39	17.334	17.455
20	71.029	74.012	40	15.000	15.000

Column A shall be applicable to the Casualty Occurrences in any one calendar year which when added to the accumulated Casualty Occurrences for the prior year(s) do not exceed the number of Units leased hereunder multiplied by 1% times the number of years the Units have been under lease.

Column B shall be applicable to those Casualty Occurrences to which Column A does not apply.

Except as hereinabove in this ¶7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

8. Records and Reports. Lessee will maintain all records, of whatever type, required by the Interstate Commerce Commission to be maintained with respect to the Units or the use thereof, regardless (as between Lessee and Lessor) of upon whom such requirements are by their terms imposed.

Lessee will promptly notify Lessor of each accident, claim and/or demand based in whole or in part on an alleged defect in any of the Units in an amount in excess of \$75,000, stating the time, place, extent and nature of the accident, claim and/or demand, and injuries and/or damage.

Lessee shall, within 100 days after the close of each calendar year ending during the Term, furnish to Lessor a certificate signed by the President or a Vice President of Lessee and by the chief fiscal officer of Lessee or his assistant, stating, as to each signer thereof, that a review of the activities of Lessee and Lessee's performance and observation of its obligations under this Lease, and any other obligations of Lessee to Lessor, during such year has been made under his supervision and, based upon such review, except as specified in said certificate: (a) Lessee has duly performed and observed all of its said obligations throughout such year; (b) no event has occurred during such year which has, or which, after notice or lapse of time or both, would become an Event of Default, as hereinafter described; and (c) an accurate statement (i) setting forth as at the preceding December 31 the amount, description and numbers of all Units then

leased hereunder and the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request and (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by §5 hereof have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease. Lessee shall also promptly after issuance thereof furnish Lessor with a copy of Lessee's Annual Report to Shareholders and Lessee's Annual Report to the Interstate Commerce Commission during each year of this Lease.

9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification and Inspection. The Lessor makes no warranty or representation, either express or implied as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any

component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have as purchaser of the Equipment under the Equipment Purchase Agreement, against any supplier or subcontractor of the Lessee as Seller under the Equipment Purchase Agreement. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation and any administration, division or agency thereof, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to

the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor under this Lease.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit and any and all parts installed on additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance shall immediately be vested in the Lessor and be subject to the terms of this Lease.

The Lessee agrees to indemnify, protect and hold harmless the Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and

expenses in connection therewith, including, but not limited to, reasonable counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in §16 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

Lessee shall permit Lessor's representatives at their own risk to enter upon Lessee's premises (and/or, to the extent Lessee is able to do so, any other premises where any of the Units may then be located) at all reasonable times, for the purpose of inspecting the Units. In connection with such inspection, Lessee shall advise Lessor's said representatives of all information Lessee then has or can reasonably

obtain with respect to the location of each of the Units and will cooperate with said representatives in all reasonable efforts to locate and inspect the Units.

10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an "Event of Default") shall occur:

A. default shall be made in payment of any part of the rental provided in §3 hereof and such default shall continue for 10 days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such

appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each unit, equal to the Casualty Value thereof (as set forth in Section 7 above) as of the date

of termination, less only the net proceeds of any re-letting or sale of said Equipment or any part thereof by Lessor, it being understood that Lessor shall have the right, but shall not be obligated to re-let all or any part of the Equipment for such rentals and upon such terms as Lessor may elect and/or sell all or any part of the Equipment at public or private sale either for cash or upon credit; and (ii) any damages not compensated by (i) above and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, covenants or provisions of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law subject only to the obligations of the Lessor under the Equipment Purchase Agreement, the Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

11. Return of Units Upon Default. If this Lease shall terminate pursuant to §10 hereof, the Lessee shall forthwith deliver possession of the Units and all material records pertinent thereto to the Lessor. For the purpose of delivering possession of any Unit

or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor;

provided that the Lessee shall not be required under clause (b) above to store such Units on such tracks (A) for more than 90 days after the termination of this Lease, if this Lease shall be terminated in consequence of an Event of Default set forth in clauses A, B or C of §10 hereof, or (B) for more than 90 days after any determination by a trustee or trustees or receiver or receivers not to assume the obligations of the Lessee under this Lease, if this Lease shall have been terminated in consequence of an Event of Default set forth in clauses D or E of §10 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person

designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior

written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them; provided, however, that the Lessor hereby consents and agrees that the Lessee may so assign or transfer its leasehold interest or sublease the Units or any of them to any affiliate of the Lessee (as that term is defined in Section 5 hereof), but no such assignment, transfer or sublease shall relieve the Lessee of its obligations under this Lease except as the Lessor may agree in writing. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted above or by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate (as above defined) upon lines of railroad owned or operated by Lessee and/or its affiliates or over which the Lessee or any such affiliate has trackage or other operating

rights or over which Railroad Equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon lines of railroad of connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and/or maintenance thereof outside the United States of America without the prior written consent of the Lessor. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this §12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that upon the effectiveness of such consolidation, merger or acquisition, such assignee or transferee shall have a net worth which shall not be less than \$25,000,000.

13. Lessee's Options. Provided that this Lease has not been

earlier terminated and the Lessee is not then in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than 90 days prior to the end of the initial or any renewal term of this Lease, elect to renew this Lease with respect to all, but not fewer than all, the Units covered by this Lease at the end of such term of this Lease for successive additional terms of one year each at a rental equal to the "Fair Rental Rate" of such Units as of the end of such term. As used herein, "Fair Rental Rate" shall mean the rental that would obtain in an arm's-length transaction between an informed and willing prospective lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease.

Provided that this Lease has not been earlier terminated and the Lessee is not then in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than 90 days prior to the end of the initial or any renewal term of this Lease, elect to purchase all, but not fewer than all, the Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to

sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before two months prior to the expiration of such initial or renewal term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Rate or Fair Market Value of the Units, such rate or value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from

the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

14. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, turn over to Lessor all material records pertinent to such Unit and deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted

under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; provided, however, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to §7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

15. Warranties, Representations and Opinions of Counsel.

Lessor warrants and represents to Lessee:

A. Lessor is a corporation duly organized, validly existing

and in good standing under the laws of the State of Delaware and has all requisite power and authority to carry on the business it now conducts and to enter into this Lease and the Equipment Purchase Agreement and perform its obligations under each thereof;

B. The execution and delivery by Lessor of this Lease and the Equipment Purchase Agreement and Lessor's performance of its obligations under each thereof, have been duly authorized by all necessary corporate action and this Lease and the Equipment Purchase Agreement constitute valid and binding obligations of Lessor's, enforceable in accordance with their terms;

C. Neither the execution and delivery of this Lease and the Equipment Purchase Agreement nor the due performance thereof will result in any breach of, or constitute any default under, Lessor's Certificate of Incorporation, By-laws or any agreement to which Lessor is bound or result in the violation of any statute or government regulation;

D. No person or entity is entitled to any fees, charges or commissions for services rendered in connection with this Lease or Lessor's purchase of the Units, as broker, salesman, finder or otherwise as a result of an agreement between Lessor and such person or entity, except such as Lessor has duly arranged to pay. Lessor hereby indemnifies Lessee and agrees to hold it harmless from and against any claim for any such fees, charges or commissions if such claim arises from an agreement between Lessor and the claimant; and

E. This is a lease and not an agreement which is intended to create a security interest.

Lessee warrants and represents to Lessor:

A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has all requisite power and authority to carry on the business it now conducts and to enter into this Lease and the Equipment Purchase Agreement and perform its obligations under each thereof;

B. The execution and delivery by Lessee of this Lease and the Equipment Purchase Agreement and Lessee's performance of its obligations under each thereof, have been duly authorized by all necessary corporate action and this Lease and the Equipment Purchase Agreement constitute valid and binding obligations of Lessee's enforceable in accordance with their terms;

C. Neither the execution and delivery of this Lease and the Equipment Purchase Agreement nor the due performance thereof will result in any breach of, or constitute any default under, Lessee's Certificate of Incorporation, By-laws or any agreement to which Lessee is bound or result in the violation of any statute or governmental regulation;

D. No person or entity is entitled to any fees, charges or commissions for services rendered in connection with this Lease or Lessee's sale of the Units as broker, salesman, finder or otherwise,

other than as a result of an agreement between Lessor and such person or entity, except such as have heretofore been paid in full or are being paid in full simultaneously with the execution and delivery hereof. Lessee hereby indemnifies Lessor and agrees to hold it harmless from and against any claim for such fees, charges or commissions unless such claim arises from an agreement between Lessor and the claimant;

E. This is a lease and not an agreement which is intended to create a security interest;

F. As of the date of the most recent financial statements heretofore furnished by Lessee to Lessor, neither Lessee nor any other corporation which is included in said financial statements had any known material liability or obligation (including taxes), absolute or contingent, not shown or provided for in said financial statements (including related notes). Since that date, there has been no material adverse change in the financial condition of Lessee or such other corporations which has not been disclosed to Lessor in writing. Said financial statements accurately and fairly represented the financial condition of the corporations covered thereby on the dates as of which such financial statements speak, and the results of the operations of such corporations to such dates;

G. The filing and recordation provided for in Section 16 hereof, when accomplished, will, under existing law, protect the Lessor's interests in and to the Units, so long as the Units are located within the United States or Canada, and no filing, recording or deposit (or giving of notice) with any other Federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units so long as the Units are located within the United States or Canada;

H. No approval is required from any public regulatory body with respect to the entering into or performance of this Lease by the Lessee; and

I. Under existing law, no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein so long as the Units are located within the United States or Canada; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

Lessor and Lessee each agrees to deliver to the other, simultaneously with the execution hereof, an opinion of counsel to the effect that the representations contained in subparagraphs A, B and C of the first paragraph of this Section 15 and subparagraphs A, B, C, G, H and I of the second paragraph of this Section 15 respectively are true and correct.

16. Recording; Expenses. The Lessee will cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited in the office of the Registrar General of Canada and notice thereof to be published in the Canada Gazette pursuant to The Railway Act of Canada. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and re-deposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to Lessor's satisfaction, of the Lessor's interest in the Units, or for the purpose of carrying out the intention of this Lease; and the Lessee will promptly furnish to the Lessor evidences of all such filing, registering, depositing or recording.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

17. Federal Income Taxes. The Lessor, as the owner of the Units, shall be entitled to claim such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date of this Agreement (hereinafter called the Code), to an owner of property, including (without limitation) the benefit of the investment credit allowed by Section 38 of the Code for "new Section 38 property" and the benefit of the depreciation deduction allowed by Sections 167(b)(2) and 167(m) of the Code. If the Lessor shall lose any portion of the benefit of such investment credit with respect to the Lessor's Cost for any Unit because any Unit is not new Section 38 property as defined in Section 48(b) of the Code or has a useful life of less than 7 years, but not otherwise, or if the Lessor shall lose any portion of the benefit of said depreciation deduction for new property because any Unit or portion thereof is determined to be used property, then the Lessee shall pay the Lessor or its assigns, as "Supplemental Rent" under this Agreement and in satisfaction of its obligation to the Lessor under this Section in respect of such loss the amounts provided for hereafter in this Section.

In the event that Supplemental Rent shall become payable pursuant to this Section, the "Aggregate Amount" of such Supplemental Rent shall be paid by Lessee to Lessor at the time Lessor suffers the loss of such tax benefit. The term "Aggregate Amount" of such Supplemental Rent to be paid pursuant to the preceding sentence shall mean that additional sum of money which is necessary to permit the Lessor to receive (on an after-tax basis over the entire term of this Agreement) the same rate of return that the Lessor would have realized (on an after-tax basis over the entire term of this Agreement) had the investment credit benefit and/or the depreciation benefit referred to in

the preceding paragraph not been lost. The Aggregate Amount shall be determined in accordance with generally accepted industry practices by the majority vote of three independent experts from public accounting firms. One expert shall be selected by the Lessor, one shall be selected by the Lessee and the third shall be selected by such experts selected by the parties hereto. Notwithstanding the foregoing, the Lessee, at its option, in lieu of paying Supplemental Rent, shall, within 60 days after it has been notified by the Lessor that the Lessor has lost the benefit of any portion of the investment credit under this Section on any Unit, have the right to purchase such Unit at the higher of the then applicable Casualty Value or the Fair Market Value (as defined in Section 13) of such Unit.

18. Lessor's Right to Make Payments; Interest on Overdue Rentals. Upon any failure by Lessee to pay any taxes for which Lessee is liable hereunder, or make any other payments to third parties required to be made hereunder, or to maintain, service, repair and/or replace any Units or perform any of Lessee's other obligations hereunder, Lessor shall have the right, at its option, to do so or to arrange for others to do so, but at Lessee's expense and without responsibility on Lessor's part: (a) for doing so or making any such arrangements; (b) the accuracy or timeliness of any such payment or action; (c) the adequacy of any work done or quality of any materials supplied; or (d) the capability or solvency of any person or entity with whom such arrangements may be made. No exercise by Lessor of any of its said options shall in any way affect the provisions of this

Lease, including the provisions that Lessee's failure to do any of said things shall constitute an Event of Default hereunder. Any monies expended by Lessor in connection herewith shall be reimbursable by Lessee on demand. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 9% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

19. Notices; Waiver of Jury Trial. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 537 Steamboat Road
Greenwich, Connecticut. 06830
Attention: Nathan Snyder, Esq.

(b) if to the Lessee, at 600 Grant Street, P.O. Box #536
Pittsburgh, Pennsylvania. 15230
Attention: Vice President-Finance

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

Lessor and Lessee each hereby waives the right to trial by jury in any action or proceeding of any kind or nature to which Lessor and Lessee may both be parties arising out of or relating to this Lease.

20. Severability; Effect and Modification of Lease.

Any immaterial provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

21. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of September 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

Attest: *Hugh M. Baum*
Secretary

RANDOLPH COMPUTER CORPORATION

by *Nathan Snyder*
Nathan Snyder,
Executive Vice President

Attest: *L. F. Young*
Assistant Secretary

BESSEMER AND LAKE ERIE RAILROAD COMPANY

by *V.W. Kraetsch*
V.W. Kraetsch,
Vice President - Finance

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

On this 21st day of November, 1972, before me personally appeared NATHAN SNYDER to me personally known, who being by me duly sworn, says that he is Executive Vice President of RANDOLPH COMPUTER CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARY SEAL]

Phyllis J. Johnson
Notary Public
NOTARY PUBLIC
My Commission Expires March 31, 1975

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF ALLEGHENY

On this 24th day of November, 1972, before me personally appeared V.W. KRAETSCH, to me personally known, who, being by me duly sworn, says that he is the Vice President - Finance of BESSEMER AND LAKE ERIE RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARY SEAL]

Dorothy M. Tarr
Notary Public
DOROTHY M. TARR, Notary Public
Pittsburgh, Allegheny Co., Pa.
My Commission Expires
March 31, 1974

SCHEDULE A

<u>Quantity</u>	<u>Description</u>	<u>AAR Mechanical Code</u>	<u>Serial Nos. of Lessee or Affiliate</u>
250	42', 70 ton gondola cars	G-112	B&LE 37,000-37,249
150	42', 70 ton gondola cars	G-112	LT 3,000 - 3,149